

UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31

ST. JOHN'S REGIONAL MEDICAL CENTER/
ST. JOHN'S PLEASANT VALLEY HOSPITAL

Employer

and

Case No. 31-RC-7844

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 399, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. 1/

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of the Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act 2/:

INCLUDED: ALL FULL-TIME AND REGULAR PART-TIME TECHNICAL EMPLOYEES, INCLUDING EMPLOYEES IN THE FOLLOWING CLASSIFICATIONS: LVN I, LVN II, SENIOR DIAGNOSTIC TECHNOLOGIST, SENIOR RADIOLOGY TECHNOLOGIST, STAFF DIAGNOSTIC TECHNOLOGIST, QUALITY ASSURANCE TECHNOLOGIST, SPECIAL PROCEDURES TECHNOLOGIST (CARDIOPULMONARY), REGISTERED VASCULAR TECHNOLOGIST, LEAD REGISTERED VASCULAR TECHNOLOGIST, NUCLEAR MEDICINE TECHNOLOGIST, ULTRASOUND TECHNOLOGIST, REGISTERED ECHO TECHNOLOGIST, LEAD REGISTERED ECHO TECHNOLOGIST, COMPUTERIZED TOMOGRAPHY TECHNOLOGIST, LEAD COMPUTERIZED TOMOGRAPHY TECHNOLOGIST, RESPIRATORY CARE PRACTITIONER I, RESPIRATORY CARE PRACTITIONER II, SPECIAL PROCEDURES TECHNOLOGIST (RADIOLOGY), CERTIFIED OCCUPATIONAL THERAPY ASSISTANT I, CERTIFIED OCCUPATIONAL THERAPY ASSISTANT II, PHYSICAL THERAPY ASSISTANT I, PHYSICAL THERAPY ASSISTANT II, ECTU/SUB ACUTE LVN/CASE MANAGER, STAFF DEVELOPMENT COORDINATOR/MDS ASSISTANT EXTENDED CARE UNIT SUB ACUTE UNIT; DIET TECHNICIANS; HYPERBARIC TECHNICIAN I; HYPERBARIC TECHNICIAN II; CARDIOVASCULAR TECHNICIAN I; CARDIOVASCULAR TECHNICIAN II; CARDIOVASCULAR TECHNICIAN III; OPERATING ROOM TECHNICIAN I; OPERATING ROOM TECHNICIAN II; OPERATING ROOM TECHNICIAN SPECIALIST; AND VIDEO LASER TECHNICIAN, EMPLOYED BY THE EMPLOYER AT ITS FACILITIES AT ST. JOHN'S REGIONAL MEDICAL CENTER (OXNARD) AND ST. JOHN'S PLEASANT VALLEY HOSPITAL (CAMARILLO) AND AT ITS FACILITIES AT 1700 N. ROSE AVENUE (OXNARD), 961 RICE AVENUE (OXNARD), 295 HUENEME ROAD (PORT HUENEME), AND 4542 LAS POSAS ROAD (CAMARILLO). Also eligible to vote are those per diem employees employed in the above classifications who worked an average of not less than 4 hours per week during the 13 week period prior to the eligibility date.

EXCLUDED: ALL OTHER EMPLOYEES (INCLUDING EMPLOYEES IN THE FOLLOWING CLASSIFICATIONS: LABOR AND DELIVERY SCRUB TECHNICIAN; HISTOLOGY TECHNICIAN; LEAD HISTOLOGY TECHNICIAN; CENTRAL SUPPLY TECHNICIAN; INSTRUMENT TECHNICIAN; MEDICAL RECORDS TECHNICIAN; MONITOR TECHNICIAN; CLINICAL TECHNICIAN; PHYSICAL THERAPY AIDE; CERTIFIED NURSING ASSISTANT; CODER I; CODER II; SENIOR

CODER; PHARMACY TECHNICIAN I; PHARMACY TECHNICIAN II; AND PHARMACY/INVENTORY TECHNICIAN), SERVICE AND MAINTENANCE EMPLOYEES, SKILLED MAINTENANCE EMPLOYEES, PROFESSIONAL EMPLOYEES, REPRESENTED EMPLOYEES, OFFICE CLERICAL EMPLOYEES, BUSINESS OFFICE CLERICAL EMPLOYEES, CONFIDENTIAL EMPLOYEES, GUARDS AND SUPERVISORS AS DEFINED IN THE ACT, AS AMENDED.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether they desire to be represented for collective bargaining purposes by SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 399, AFL-CIO.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the

election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that an election eligibility list, containing the **FULL** names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 31 within 7 days of the date of the Decision and Direction of Election. The list must be of sufficiently large type to be clearly legible. This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election, only after I shall have determined that an adequate showing of interest among the employees in the unit found appropriate has been established.

In order to be timely filed, such list must be received in the Regional Office, 11150 West Olympic Blvd., Suite 700, Los Angeles, California 90064-1824, on or before ***May 30, 2000***. No extension of time to file this list may be granted, nor shall the filing of a request for review operate to stay the filing of such list except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission. Since the list is to be made available to all parties to the election, please furnish a total of 2 copies, unless the list is submitted by facsimile, in which case no copies need be submitted. To speed the preliminary checking and the voting process itself, the names should be alphabetized (overall or by department, etc.).

RIGHT TO REQUEST REVIEW 3/

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W.,

Washington, DC 20570. This request must be received by the Board in Washington by **June 6, 2000.**

DATED at Los Angeles, California this **23rd** day of **May, 2000.**

/s/ James J. McDermott
James J. McDermott, Regional Director
National Labor Relations Board
Region 31

FOOTNOTES

- 1/ The Employer, St. John's Regional Medical Center/St. John's Pleasant Valley Hospital, is a California, non-profit corporation, engaged in the operation of acute care and extended care hospitals at its facilities located in Oxnard, California and Camarillo, California. During the past 12 months, a representative period, the Employer derived revenue in excess of \$250,000. During this same period of time, the Employer purchased and received goods, supplies, and materials valued in excess of \$50,000 directly from enterprises located outside the State of California. The Employer thus satisfies the statutory jurisdictional requirement as well as the Board's discretionary standard for asserting jurisdiction herein. Butte Medical Properties d/b/a Medical Center Hospital, 168 NLRB 266 (1967).

- 2/ The Petitioner seeks to represent a unit of technical employees employed by the Employer. The parties stipulated, and I find, that the following job classifications should be included in the technical unit: LVN I; LVN II; Senior Diagnostic Technologist; Senior Radiology Technologist; Staff Diagnostic Technologist; Quality Assurance Technologist; Special Procedures Technologist (Cardiopulmonary); Registered Vascular Technologist; Lead Registered Vascular Technologist; Nuclear Medicine Technologist; Ultrasound Technologist; Registered Echo Technologist, Lead Registered Echo Technologist; Computerized Tomography Technologist; Lead Computerized Tomography Technologist; Respiratory Care Practitioner I; Respiratory Care Practitioner II; Respiratory Care Practitioner III; Special Procedures Technologist (Radiology); Certified Occupational Therapy Assistant I; Certified Occupational Therapy Assistant II; Physical Therapy Assistant I; Physical Therapy Assistant II; ECTU/Sub Acute LVN/Case Manager; and Staff Development Coordinator/MDS Assistant Extended Care Unit Sub Acute Unit.

The parties disagree with respect to the placement of certain other classifications in the unit. The Employer asserts that the following classifications should be

excluded from the unit and the Petitioner asserts that these classifications should be included in the unit: Pharmacy Technician I; Pharmacy Technician II; Pharmacy/Inventory Technicians; Hyperbaric Technician I; Hyperbaric Technician II; Cardiovascular Technician I; Cardiovascular Technician II; Cardiovascular Technician III; Operating Room Technician I; Operating Room Technician II; Operating Room Technician Specialist; and Video Laser Technician. The Petitioner asserts that the following classifications should be excluded from the unit and the Employer asserts that these classifications should be included in the unit: Diet Technician; Coder I; Coder II; and Senior Coder. The record reveals that the employees in the disputed job classifications generally work similar hours and share similar fringe benefits and working conditions as employees stipulated to be in the unit.

TECHNICAL EMPLOYEES

In its *Second Notice of Proposed Rulemaking* concerning collective bargaining units in the health care industry, the Board noted that “technical employees perform jobs involving the use of independent judgment and specialized training, as opposed to service and maintenance employees...[T]echnical employees occupy a high-prestige status distinct from other categories of non-professional employees because of the training requirements for their jobs...Technical employees further are distinguished by the support role they play within the hospital, and by the fact that they work in patient care.” The Board further noted that technical employees “have significant additional education and/or training beyond high school, including: community college associate degree programs...; vocational training programs run by hospitals...; programs at accredited schools of technology...; and, in some fields, a full 4-year college degree.” In addition, the Board observed that “most hospital technical employees are either certified (usually by passing a national examination), licensed, or required to register with the appropriate state authority.” 53 Federal Register No.170, September 1, 1988, Section 33918; 284 NLRB 1527, 1553-1555.

In *Barnett Memorial Hospital Center*, 217 NLRB 775 (1975), the Board described the criteria it employs in determining whether employees in certain job classifications are technical employees. The Board described technical employees as those “who do not meet the strict requirements of the term professional employee as defined in the Act but whose work is of a technical nature involving the use of independent judgment and requiring the exercise of specialized training usually acquired in colleges or technical schools or through special courses.” See also *Meriter Hospital*, 306 NLRB 598, 599 (1992).

OPERATING ROOM TECHNICIANS

The Employer asserts that employees in the following classifications should be excluded from the unit: Operating Room Technician I; Operating Room Technician II; Operating Room Technical Specialist; and Video Laser Technician. Sometimes Operating Room Technicians are referred to as Scrub Technicians.

The job descriptions for the various OR Technician (“OR Tech(s)”) positions require completion of an operating technician training course. In addition, the position of OR Tech I requires at least one year of experience as an operating room technician and the position of OR Technician II requires at least two years of such experience. The positions of OR Tech Specialist and Video Laser Tech require graduation from an accredited surgical technician program with a certification as a scrub technician, as well as a minimum of two years experience for the OR Tech Specialist position and 5 years of experience for the Video Laser Tech position. The employees classified as Operating Room Technician Specialists can scrub on specialty cases, such as open heart surgery. The employees classified as Video Laser Technicians have specific training in laser technique.

The Employer employs 13 OR Techs, of whom three are Operating Technician Specialists, one is a Laser Video Technician, six are OR Techs II, and three are OR Techs I. Each of the OR Techs at the St. John’s facility completed a surgical technician program, which involves about 3½ to 4½ months of full time

classroom training and then about 8 months of clinic internship, during which there is classroom training one day a week. Five of the OR Techs took their training at Simi Valley Adult School, which is a one year program. The OR Technical Specialist and the Video Laser Technician are certified by the Association of Surgical Technologists. In order to maintain their certifications, they are required either to take continuing education classes or to re-test. All but two of the OR Techs II are certified. Although none of the OR Techs I are certified, one of them has an Associate Degree in surgical technology and the other went to a surgical technician program at a career college. The record reveals that all of the OR Techs who do not possess certifications have had sufficient training to qualify to take the examination.

The OR Techs are considered to be part of the surgical team. Before surgery, the OR Tech checks the preference card for the surgeon, if there is one available, and determines what supplies and equipment are needed. After the OR Tech scrubs, he prepares the sterile field and opens the sterilized instruments. He then assists the surgeon with his gown and gloves and helps to drape the patient for the surgery. During the surgery, the OR Tech works with the surgeon within what is considered to be the sterile field. Often, only the surgeon and the OR Tech are within the sterile field. The OR Tech hands instruments to the surgeon and may suction the area or hold a retractor. Before the incision is closed, the OR Tech and the circulating nurse count the instruments and sponges.

The record reveals that OR Techs exercise independent judgment in connection with the performance of their duties. There is some judgement exercised in the selection of instruments gathered by the OR Techs for the procedures. Even when there is a preference card for the surgeon, the OR Tech must consider the size of the patient in selecting the instruments and must determine whether other instruments should also be present. For example, if a pelvic surgery is being performed, the OR Tech might anticipate that a tumor would around a bowel might be encountered and might decide to have vascular and bowel

instruments available as well. Also, the OR Techs exercise judgment in connection with the maintenance of a sterile field. Thus, they must identify a contamination of the sterile field and determine the best way to address the situation. For example, if an OR Tech notices that a sterile package has been pierced, the OR Tech must determine whether the instrument can be re-sterilized and what would be the best method. If the OR Tech notices that somebody accidentally touched an area of the sterile field, such as a table holding the instruments, the OR Tech might place a sterile towel over the contaminated area. If an OR Tech observes a physician touch a non-sterile part of the lamp with his glove, the OR Tech might refuse to hand him the next instrument until the physician has re-gloved.

More importantly, as listed in the job descriptions for the OR Tech positions, the OR Techs must anticipate activities in the surgical procedure. Much of the time, the surgeon does not specifically ask for the instrument he desires. Rather, he just holds out a hand and the OR Tech must anticipate what instrument the surgeon needs at that time. Sometimes when the surgeon does request a specific instrument, the OR Tech suggests a different instrument (such as a different sized clamp) as being more appropriate. The OR Tech uses his training in instrumentation and physiology to know what is the appropriate instrument.

If the OR Tech observes bleeding, the OR Tech must know to pass an appropriate clamp or a bovie. If the OR Tech observes the surgeon struggling to see a particular area, the OR Tech knows to offer a retractor (an instrument that retracts tissue away from the area where the surgeon is working). In fact, the OR Tech might actually hold the retractor. In doing so, the OR Tech must know the appropriate pressure to apply while holding the retractor. Also, the OR Tech might grab a suction and carefully suction. The OR Tech does not wait to be told when or where to suction. Rather, the OR Tech exercises judgment in determining when to suction and where to suction. The OR Tech is expected to anticipate that there may be significant bleeding during certain procedures and have the appropriate instruments to control the bleeding available for the

surgeon at the right time. If during the course of the surgery, an unexpected problem is encountered, the OR Tech instructs the circulating nurse what instruments are needed as a result of the unforeseen change in circumstances.

I conclude that OR Techs clearly possess the criteria for classification as technical employees. In this regard, I particularly note that their work is of a skilled technical nature that involves the use of independent judgment and requires the exercise of specialized training. Indeed, each of the OR Techs has had at least 11 months of specialized training. See, *Meriter Hospital*, 306 NLRB 598, 600-601 (1992). See also, *Rhode Island Hospital*, 313 NLRB 343, 354 (1993)(finding surgical technicians to be included in a technical unit where they are required to receive special training, ranging from 3 months to a year and where they must anticipate the needs of the doctors performing surgery); *William W. Backus Hospital*, 220 NLRB 414, 418 (1975) (finding surgical technicians who achieved a sufficient level of familiarity with surgical tools and procedures to assist physicians during surgery to be technical employees, notwithstanding the fact that the record therein failed to establish the educational requirements for the position); and *Medical Arts Hospital of Houston*, 221 NLRB 1017, 1019 (1975)(finding operating room technicians to be technical employees, although they are not licensed, registered, or certified, because they are required to complete specialized training courses and their job duties are of a technical nature reflecting the use of independent judgment).

Accordingly, I shall include the job classifications of Operating Room Technician I; Operating Room Technician II; Operating Room Specialist; and Video Laser Tech in the unit.

Cardiovascular Technicians

The job description for the Cardiovascular Technician I position requires that the technician have an Associate of Science Degree or a certificate of achievement,

with a preference for such a degree from a cardiovascular technology program. In addition, the job description requires six months' experience in cardiovascular technology or related field experience. The requirements for the positions of Cardiovascular Technician II and III are similar to that of the Cardiovascular Technician I, except that two years of experience is required for the Cardiovascular Technician II position and three years of experience is required for the position of Cardiovascular Technician III. In addition, the Cardiovascular Technicians take classes at which they are trained to recognize arrhythmias.

Invasive Cardiovascular Lab Department

There are four Cardiovascular Technicians in the invasive cardiovascular lab department. Three of the four Cardiovascular Technicians graduated from a college with an Associate Degree, specializing in cardiovascular technician training. The fourth Cardiovascular Technician has been a Cardiovascular Technician for over 25 years. Apparently, there were no special cardiovascular technician training programs at the time this employee started to work as a Cardiovascular Technician.

Invasive procedures are performed in two rooms, a cardiac room and a special procedures room. Invasive cardiac procedures (such as catheter procedures and angioplasties) and the implantation of pacemakers and automatic implantable cardiac defibrillators ("defibrillators") are performed in the cardiac room. Other invasive procedures, such as cerebral angiograms, visceral angiograms, abdominal aortograms and gastrostomy tube insertions, are performed in the special procedures room.

During the cardiac catheterization procedures and the angioplasty procedures, the Cardiovascular Technicians work as either scrub technicians or monitor technicians. When they work as scrub technicians, they prepare the patients for the procedures, drape the patients, maintain a sterile technique, and hand instruments to the cardiologists. After the surgeries, the Cardiovascular Technicians place pressure on the incisions until homeostasis is reached. When

they work as monitor technicians they sit at monitors that record a patient's heart rhythms. During procedures to implant pacemakers or defibrillators, the Cardiovascular Technicians act in the capacity of scrub technicians.

The record reveals that Cardiovascular Technicians who work with invasive procedures exercise independent judgment. During an angioplasty procedure, the Cardiovascular Technician may inflate the balloon under the direction of the cardiologist. A Cardiologist may ask a Cardiovascular Technician for his assessment of whether a stint placement or angioplasty looks good. Although the Director of Diagnostic Imaging, who is responsible for the invasive cardiovascular laboratory, testified that Cardiovascular Technicians do not inject contrast media, or dye, into patients during procedures, several Cardiovascular Technicians testified that, in fact, they do inject contrast media. While injecting contrast media, the Cardiovascular Technician must carefully watch the screen to be sure he is injecting sufficient contrast to fill the vessel. He must inject a sufficient amount of contrast media to get the optimal image on the fluoroscopy and yet use the minimum amount of the dye. The Cardiovascular Technicians must use independent judgment in injecting the appropriate volume with the appropriate pressure. In determining the appropriate amount of contrast media to apply, the Cardiovascular Technician must be aware of the patient's condition and lab results. For example, excess contrast media might jeopardize kidney function of a patient with an inappropriate serum creatinine level. The Cardiovascular Technicians also considers the angle of the x-ray tube and the anatomy of the particular patient in determining the amount of contrast media to inject. If a Cardiovascular Technician injects too much contrast, or uses too much pressure, the catheter might become dislodged. After these witnesses testified at the hearing, the Director was recalled as a witness. At that point, he testified that he had investigated the Petitioner's assertion and confirmed that Cardiovascular Technicians do inject the contrast media. Nevertheless, in it's post-hearing brief, the Employer asserts that the Cardiovascular Technicians do not administer the contrast media, citing the initial testimony of the Employer's

Director of Diagnostic Imaging. I note that this assertion contradicts not only the testimony of several Cardiovascular Technicians, but also the testimony of that very same Employer witness who later testified that Cardiovascular Technicians do indeed inject contrast media.

During catheter procedures, the Cardiovascular Technicians assist the Cardiologist in feeding the guide wire into the heart. After the wire is in place, the Cardiovascular Technician may maintain the desired position while the Cardiologist feeds the catheter over the wire. In doing so, the Cardiovascular Technician must evaluate data on the fluoroscopy screen and may need to advance the wire or apply pressure to maintain the appropriate position. The Cardiovascular Technician may need to move a wire forward or back as the catheter goes around the aortic arch in the heart. This requires a skilled technique. After the Cardiologist anchors the catheter, he may instruct the Cardiovascular Technician to remove the guide wire.

Throughout these procedures, the Cardiovascular Technician monitors the insertion site to observe whether there is swelling. After a diagnostic catheterization, the Cardiovascular Technician must evaluate the patient's condition to determine whether it is appropriate to remove the introducer from the femoral artery. Before removing the introducer, the Cardiovascular Technician must ensure that there is adequate blood flow to the feet and must determine whether the blood pressure is elevated to a level that would interfere with the ability of the femoral artery to close. While removing the introducer, the Cardiovascular Technician continues to monitor the patient and watch for any unusual behavior that might indicate a serious problem. When the catheter is removed, the Cardiovascular Technician applies pressure until homeostasis is reached.

Similarly, in procedures to insert defibrillators or pacemakers the Cardiovascular Technicians hand instruments to the surgeon and suction when needed.

Although Cardiovascular Technicians assigned to work in the special procedures room perform similar functions, they do not inject the contrast medium.

As noted above, the Cardiovascular Technicians in this department rotate between the function of Scrub Tech and Monitor Tech. The Cardiovascular Technicians serving as Monitor Technicians exercise judgment in selecting which wave forms to use in calculations that are used to determine whether the patient has a leaky valve or a narrowed valve and whether the patient will need surgery.

I find that the Cardiovascular Technicians in the invasive procedures area clearly meet the criteria to be included in a technical unit. Their work is of a technical nature involving the use of independent judgment and the exercise of specialized training.

Non-Invasive Cardiology Department

There are three Cardiovascular Technicians in the non-invasive procedure area. One of the employees is a Cardiovascular Technician I. She previously was employed as a Phlebotomist and received four to six months of on-the-job training. There are two employees classified as Cardiovascular Technician III. One of them is a paramedic who works on an on-call basis. The other employee has a Bachelor's Degree in biology and attended a cardiovascular technician school as well. The Director of the Laboratory, Cardiology and Neuro Diagnostics departments testified that notwithstanding the requirements set forth in the job descriptions for Cardiovascular Technicians, the Employer does not actually require formal training for these positions.

The Cardiovascular Technicians in the non-invasive procedures area monitor patients who are taking various tests, including tilt tests, stress tests and cardiolute persantine tests. Although it is the physician who orders the various tests, the Cardiovascular Technicians may suggest to the physician that a particular test is inappropriate for a particular patient, such as a stress test for

an elderly woman with a hip replacement. The Cardiovascular Technicians get the patients ready for the procedures, ensuring that the patient history, patient consent and other documentation is in order. The Cardiovascular Technicians calculate the maximum appropriate heart rate. During the tests, the Cardiovascular Technicians monitor the EKG readouts and the patients' blood pressure. The Cardiovascular Technicians must identify irregular heartbeats and bring arrhythmias to the attention of a Physician. The Cardiovascular Technicians III also provide pre- and post-procedure patient information. In addition, on occasion, the Cardiovascular Technicians III go to the operating room to assist Surgeons with the programming of pacemakers.

The Cardiovascular Technicians also work with Holter Monitors, which are worn by patients on an outpatient basis for 24 hours. The Cardiovascular Technicians place the wires on the patients and give them instructions. The Cardiovascular Technicians were trained by the Holter Monitor equipment manufacture as to how to place the electrodes on the patients. When a patient returns with a Holter monitor, a Cardiovascular Technician must review the tape and produce a condensed version. While reviewing the tape, the Cardiovascular Technician identifies abnormalities and determines what to present to the Physician. In doing so, the Cardiovascular Technicians must correlate arrhythmias with symptoms and activities noted by the patient in a diary. The Cardiovascular Technicians also analyze pacemakers.

I find that the Cardiovascular Technicians who work in non-invasive cardiology satisfy the criteria to be included in a unit of technical employees. They perform work of a technical nature, involving the use of independent judgment. I further find that their work requires the exercise of their specialized training. In this regard, I note that they exercise judgment in determining, based on their training, when to alert a Physician to a problem. For example, with respect to the Holter Monitors, the Cardiovascular Technicians use their judgment in determining whether the data reflects an arrhythmia and in deciding what parts of the tape to show to the Physician. In making these determinations, they

compare the heart data with the activities reflected in the patient's journal for the corresponding period of time.

CONCLUSION WITH RESPECT TO CARDIOVASCULAR TECHNICIANS

Based on the foregoing, I conclude that the Cardiovascular Technicians in both the invasive and non-invasive procedures areas are technical employees, who should be included in the Unit. Therefore, I shall include the classifications of Cardiovascular Technician I, Cardiovascular Technician II, and Cardiovascular Technician III in the unit.

HYPERBARIC TECHNICIANS

The Hyperbaric Technicians work in the hyperbaric wound care unit. There are three hyperbaric chambers in the unit. There usually is one technician and one RN on duty covering the three chambers. The record is unclear with respect to the number of Hyperbaric Technicians currently employed by the Employer. Although there was testimony that there are three Hyperbaric Technicians, at the end of the hearing, the Employer stated that there is only one Hyperbaric Technician. The job description for the position of Hyperbaric Technician I states that completion of a clinical technician program or related work experience is preferred. The employees classified as Hyperbaric Technicians II are required to be certified and to have at least one year of experience working in a hyperbaric unit. In order to be certified, the employee must have completed a one week training course, have a set number of hours of clinical experience, and have a letter of recommendation. Only one of the Hyperbaric Technicians employed by the Employer is certified. Until three months before the hearing in this matter, an outside company supplied the technicians in the hyperbaric unit.

The hyperbaric procedure involves a serious risk of fire or explosion. The Hyperbaric Technicians are responsible for safety. They perform daily inspections of the equipment. Before the patient goes into the chamber, the Hyperbaric Technician ensures that the patient is not wearing anything that could cause a spark. While the chamber is being pressurized, the Hyperbaric Technician must carefully observe the patient to monitor whether the patient is having difficulty with his ears. If the Hyperbaric Technician observes that the

patient is having difficulty clearing his ears, the Hyperbaric Technician, based upon his own assessment of the situation, stops the chamber from changing pressure and allows the patient to equalize his ears before resuming the pressurization. The Hyperbaric Technician also has discretion in determining how long to take to achieve the desired pressure. If the patient shows warning signs of oxygen toxicity, the Hyperbaric Technician initiates air therapy.

I find that the work of the Hyperbaric Technicians is of a technical nature, involving the use of independent judgment and requiring the exercise of specialized training. Therefore, I conclude that the Hyperbaric Technicians meet the criteria for inclusion in the unit of technical employees. Accordingly, I shall include the job classifications of Hyperbaric Technician I and Hyperbaric Technician II in the unit.

DIET TECHNICIANS

In the food and nutrition services department, the Employer employs Registered Dietitians, Diet Technicians, Dietary Hostesses, Diet Assistants and Food Service Workers. There are three Registered Dietitians and one Diet Technician at the Pleasant Valley facility and five Registered Dietitians and three Diet Technicians at the Regional Medical Center facility. The parties disagree with respect to the placement of the four Diet Technicians. The Diet Technicians screen and assess patients who are considered to be "lower priority" patients, or patients who have less acute medical problems. The Diet Technicians make menu modifications, assist in patient education, and make computer entries. Generally, the Registered Dietitians work with more complicated patients, such as those on ventilators or those requiring total parenteral nutrition ("TPN"). The Diet Technicians exercise independent judgment in assessing and screening patients. They must use their training and experience to evaluate and integrate lab results and patient diet history.

The Employer requires that the Diet Technicians possess an Associate Degree in Dietetics and have a Diet Technician Certification, or have a Bachelor of Science

Degree in food and nutrition. Each of the four current Diet Technicians has a Bachelor Degree in nutrition. One of the Diet Technicians also has a Dietary Technician Registered ("DTR") designation, the maintenance of which requires continuing education.

The Employer asserts that the Diet Technicians should be included in the technical unit herein. The Petitioner asserts, however, that the Diet Technicians should be excluded from the technical unit because they are professional employees. Although Diet Technicians do perform work involving the use of independent judgment and specialized training, I do not find that their work involves the requisite consistent exercise of discretion and judgment to be deemed professional employees. The mere fact that all of the current Diet Technicians have Bachelors of Science degrees, is not determinative in assessing their placement as technical or professional employees. In this regard, I note the Board's observation in its Second Notice of Proposed Rulemaking that in some fields, technical employees have a full 4-year college degree. 53 Federal Register No. 170, September 1, 1988, Section 33918; 284 NLRB 1527, 1554.

Accordingly, I shall include the Diet Technicians in the Unit.

CODERS

The Employer employs employees in the medical records department who are classified as Coder I, Coder II and Senior Coder. These employees evaluate the medical records of patients, usually after they are discharged, and assign a code for the final diagnosis. This is done for billing purposes and so that files can be pulled for review by regulatory agencies. The Coders are required to have taken classes in medical terminology, anatomy, physiology, and coding. The Coders I are required to have a minimum of three months experience and the Coders II and Senior Coders are required to have at least two years of experience.

Generally, the Coders I work with records from the emergency room and the ancillary areas (such as laboratories); Coders II work with one day surgery patients and Senior Coders work with all types of medical records.

Although certification is not required by the Employer, some of the coders are certified. There are two coders classified as Coder I. One of them is a Registered Health Information Technician ("RHIT"). The RHIT designation requires completion of a two year Associate Degree program and completion of a national examination. There are five employees classified as Coders II; one of whom is a Certified Coding Specialist ("CCS") and the other of whom is a registered nurse. The CSS designation requires a high school diploma and an examination. There are two Senior Coders, both of whom have CSSs.

In contrast to other employees in the unit, the coders do not have any interaction with patients. The coders work in the medical records department with the medical records clerks, whom the parties have stipulated to be excluded from the unit herein. I do not find that the coders meet the criteria to be considered technical employees. Therefore, I shall exclude them from the technical unit. See *Duke University*, 226 NLRB 470, 471 (1976). See also, *The Baptist Memorial Hospital*, 225 NLRB 1165, 1168 (1976). _

PHARMACY TECHNICIANS

The Employer employs approximately 22 employees in the job classifications of Pharmacy Technician I, Pharmacy Technician II and Pharmacy/Inventory Technician. The Petitioner asserts that the Pharmacy Technicians meet the criteria to be considered technical employees and, therefore, should be included in the Unit. The Employer asserts, to the contrary, that the Pharmacy Technicians should be excluded from the unit.

The Employer's job description for the position of Pharmacy Technician I only requires graduation from high school and the job descriptions for Pharmacy Technician II and Pharmacy/Inventory Technician only require IV certification in addition to high school graduation. Since about 1997, the State of California has required that all Pharmacy Technicians be registered. The State provides for various methods by which Pharmacy Technicians can be registered, including the following: receiving an Associate Degree in a related field of study; completing

an accredited training course or any other course that provides a minimum of 240 hours of theoretical and practical instruction; becoming eligible to take the board's pharmacist licensure examination; having at least one year's experience, including 1500 hours performing tasks of a pharmacy technician, in an inpatient hospital or correctional facility setting; having a minimum of 1500 hours experience with the last three years as a California registered pharmacy technician in a community or outpatient pharmacy; or having a minimum of 1500 hours within the last three years working in a community or outpatient pharmacy performing clerk-typist duties, such as entering prescription information into a computer and handling the cash register. The majority of the Employer's current Pharmacy Technicians obtained their registered status by virtue of being "grandfathered in" by having worked over 1500 hours in a hospital pharmacy prior to 1997. There is no continuing education requirement to maintain a current State registration. Eight of the Pharmacy Technicians employed by the Employer are certified by a national association.

State regulations restrict what tasks Pharmacy Technicians can perform. The California State Board of Pharmacy, the agency responsible for the registration of Pharmacy Technicians, defines a Pharmacy Technician in a document entitled "Pharmacy Technician Registration Application and Requirements" as an "individual who, under the direct supervision and control of a pharmacist, performs packaging, manipulative, repetitive, or other non-discretionary tasks related to the processing of a prescription in a licensed pharmacy, but excludes all functions restricted to a registered pharmacist."

The Pharmacy Technicians work in the Employer's main pharmacy, the IV room and/or satellite pharmacies. There are two satellite pharmacies on each floor and a tube system connecting them to the main pharmacy. The Pharmacy/Inventory Technicians perform the same work as the Pharmacy Technicians II, except that they also maintain inventory levels, order drugs and supplies, and collect and return pharmaceuticals that have reached their expiration dates. Pharmacy Technicians II and Pharmacy/Inventory Technicians

are certified to work with intravenous fluids ("IVs"). Apparently, to be considered "certified" as an IV technician, the technician receives 2 weeks to 6 months of in-house training and takes an exam offered by the Employer. Although the Employer asserts that it does not require Pharmacy Technicians to take continuing education classes, it is apparent from the record that the Employer does encourage Pharmacy Technicians to do so.

When assigned to the main pharmacy, the Pharmacy Technicians fill narcotic and non-narcotic floor stock, fill new orders, make deliveries, put away incoming stock from suppliers and assist in billing. To fill orders, the Pharmacy Technicians review computer screens that show the medications that will be needed by each patient during the next 24-hour period. The Pharmacy Technicians take the medications from the stock and place it in patient bins, where it is checked by a Pharmacist before being dispensed. With respect to new orders, either a Pharmacy Technician or a Pharmacist enters the order into the computer. If the entry is made by a Pharmacy Technician, a Pharmacist checks the entry. After a label is printed, the Pharmacy Technician takes the label and picks the medication. Again, a Pharmacist checks the order before it is dispensed. The Pharmacy Technicians also maintain the floor stock where medications are stocked in the nursing units. Nurses submit pharmacy requisition slips and Pharmacy Technicians pull the medications, which are checked by a Pharmacist before being dispensed to the floor. The Pharmacy Technicians also process paperwork for the narcotics safe and maintain appropriate levels of narcotics. In doing so, they receive reports indicating which narcotics are low and lay them out for a Pharmacist to check before placing them in bins for the satellite Pharmacy Technicians to retrieve and place in the narcotic machines on the floors.

The Pharmacy Technicians also fill the medication carts for the intensive care unit ("ICU") and the coronary care unit ("CCU"). A computer generates a report showing the medications needed on a patient by patient basis. The Pharmacy Technicians pull the appropriate medications off the shelf and they are checked

by a Pharmacist before being dispensed. The Pharmacy Technicians in the main pharmacy can transmit medications to the satellites by tubes. Nurses may come to the main pharmacy or a satellite pharmacy with a medication order. If a Pharmacist is not present, the Pharmacy Technician may permit the nurse to sign for the medication and take it. However, if the Pharmacy Technician believes that something is not appropriate, such as the dosage, the Pharmacy Technician might not permit the nurse to take the medication until a Pharmacist was consulted. There was testimony that when an order comes in from the emergency room for medication that is needed immediately, and the Pharmacy Technician is unable to reach a Pharmacist to check the medication, the Pharmacy Technician might dispense the medication without a Pharmacist first checking it. It does not appear that this practice occurs very often and the Assistant Director of Pharmacy testified that it is against hospital procedures for Pharmacy Technicians to engage in this practice.

When the Pharmacy Technicians work in the IV room, they prepare the IV solutions. While preparing the IV solutions, they must maintain a sterile field. In some instances, they merely place labels on pre-packaged IV solutions. In other situations, they add medications to the solutions. After Pharmacy Technicians add medications to an IV solution, they must place the syringe, drawn back to the appropriate quantity of medication, next to the medicine bag from which they withdrew the medication so that a Pharmacist can verify that they prepared the correct mixture. With respect to TPN solutions for the neonatal intensive care unit, a Pharmacist must check the supplement before it is added.

When the Pharmacy Technicians are assigned to a satellite, they maintain the stock of medication on medication carts. The medication carts are locked and the Pharmacy Technicians must unlock the carts for the nurses to get the medications. The nurses bring medication orders to the satellite pharmacy and the Pharmacy Technicians enter the orders into the computer and pull the medications. Generally, a Pharmacist checks the medications and places the

medications in bags before they are placed in the patient medication bins. However, if a Pharmacist is not available and the medication is not a narcotic and is required right away, the Pharmacy Technician might grant the nurse access to the cart and have the nurse sign for the medication. The Pharmacy Technician can not physically hand the medication to the nurse; the nurse must physically take the medication from the cart. As is the case with the Pharmacy Technicians in the main pharmacy, if a Pharmacy Technician assigned to a satellite has a concern about the appropriateness of the order, he or she might not permit a nurse access to the medication until it is checked by a Pharmacist.

I consider the unit placement of the Pharmacy Technicians to be a close issue. For example, as noted above, the record reveals that Pharmacy Technicians have exercised judgment in refusing to provide a registered nurse access to a medication in circumstances where the Pharmacy Technician questioned the appropriateness of the medication or the dosage. However, in such circumstances, the Pharmacy Technician merely contacts the Pharmacist to check the medication order. After reading the current case law, I conclude that the Pharmacy Technicians are not technical employees. In *Rhode Island Hospital*, 313 NLRB 343, 356 (1993) the Board found Pharmacy Technicians to be excluded from a technical unit notwithstanding the fact that they were required to have 1 to 2 years of college, or comparable work experience. The Board particularly noted that Pharmacists review the work of the Pharmacy Technicians. Similarly, in *Meriter Hospital*, 306 NLRB 598, 601 (1992), the Regional Director therein found that Pharmacy Technicians were not technical employees, notwithstanding the fact that they filled prescriptions, since they did so under the close scrutiny of licensed Pharmacists. (Although in *Meriter* the Board did not specifically address the Regional Director's handling of the issue of Pharmacy Technicians, in *Rhode Island Hospital*, supra, the Board cited with approval the treatment of Pharmacy Technicians in the *Meriter* case.)

Accordingly, I shall exclude the job classifications of Pharmacy Technician I; Pharmacy Technician II; and Pharmacy/Inventory Technician from the unit.

PER DIEM EMPLOYEES

With respect to the eligibility of per diem employees to vote, the Employer asserts that employees who worked not less than 52 hours in the 13-week period preceding the eligibility date should be eligible to vote. The Petitioner asserts that employees who worked an average of at least four hours per week during either the three month period, or the 13 week period, immediately preceding the issuance of this Decision and Direction of Election should be eligible to vote in the election. The Petitioner asserts that under the formula propounded by the Employer, it is possible that employees who worked many hours during the first week and a half of the 13-week period would be eligible to vote, even if they did not work at all during the 11 ½ weeks prior to the eligibility date. Neither the Employer nor the Petitioner have provided any case authority for their respective positions.

In devising an eligibility formula that equitably determines which employees shall be entitled to vote, the Board seeks "to afford those employees with a substantial and continuing interest in employment an opportunity to vote..." *Marquette General Hospital*, 218 NLRB 713, 714 (1975). The Board also seeks to allow for "optimum employee enfranchisement and free choice, but without permitting individuals to vote who have no real continuing interest in the terms and conditions of employment..." *Trump Taj Mahal Casino*, 306 NLRB 294, 296 (1992).

Generally, absent special circumstances, the Board uses an eligibility formula under which it finds on-call or per diem employees to be eligible to vote if they have worked an average of 4 or more hours per week for the last quarter prior to the eligibility date. *S.S. Joachim and Anne Residence*, 314 NLRB 1191, 1193 (1994). The Board has used a different eligibility formula in situations where the

record established a significant disparity in the number of hours worked by the on-call employees. *Marquette General Hospital*, supra.

Since the record herein does not contain evidence of a significant disparity in the number of hours worked by per diem employees, and absent any showing of special circumstances, I find that the Board's traditional formula to determine voter eligibility is appropriate. Thus, I find that per diem employees who averaged 4 hours or more of work per week during the quarter prior to the eligibility date are eligible to vote in the election. *S.S. Joachim and Anne Residence*, supra; *Northern California Visiting Nurses Association*, 299 NLRB 980 (1990); *Sisters of Mercy Health Corporation*, 298 NLRB 483 (1990); *Davis-Paxon Co.*, 185 NLRB 21, 23-24 (1970).

There are approximately 232 employees in the unit found appropriate.

The Petitioner declined to take a position at the hearing as to whether it would be willing to proceed to an election in any unit found to be appropriate by the undersigned.

- 3/ In accordance with Section 102.67 of the Board's Rules and Regulations, as amended all parties are specifically advised that the Regional Director will conduct the election when scheduled, even if a request for review is filed, unless the Board expressly directs otherwise.

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